IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5820 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
PUSHPABEN WD/O SANKALCHAND PUNABHAI VACHHETA & 1 - Respondent(s)

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Appearance :

MR LR PUJARI, ASSTT. GOVERNMENT PLEADER for Petitioner
None for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/04/2007

ORAL JUDGMENT

1. Shri L.R. Pujari, learned AGP for the State; none for the respondents though served.

2. The short facts necessary for disposal of the present petition are that the respondent no.2 – Sankabhai Somabhai Valand sold certain agricultural land bearing survey no. 1525/242 admeasuring 1.02 acres of village Ognaj to the respondent no.1 on 25.6.79. A team constituted under the Record of Rights made certain investigations and submitted its report to the Mamlatdar on 20.4.84. After receiving such report, the Mamlatdar started an inquiry under Section 84[c] of the Bombay Tenancy & Agricultural Lands Act. On 3.6.85, the Mamlatdar issued a notice to the respondent no.1- Sankalchand Punabhai Vachheta [purchaser] to show cause as to why transaction be not annulled. However, by order dated 19.5.87 passed in Case No. 1878/85, the learned Mamlatdar cum ALT rejected the objections and held that the respondent no. 1 not being an agriculturist under Section 2[6] of the Bombay Tenancy & Agricultural Lands Act could not purchase the land, the transaction was absolutely illegal. He ordered vesting of the

land in the State Government. Being aggrieved by the said order, the purchaser filed an appeal no. 237/87 before the Deputy Collector, but the same came to be dismissed by the said Deputy Collector on 18.6.88. The respondent no.1 [purchaser] thereafter filed revision application no. TEN.B.A. 666/88 before the Gujarat Revenue Tribunal. The Tribunal by order dated 24.12.93 set aside the order passed by the Deputy Collector and held that revisional powers could not be exercised after delay of almost five years. The State being aggrieved by the said order passed by the Tribunal is now before this Court. During pendency of the writ application, the respondent no.1 expired, therefore, legal representatives were substituted and brought on the records.

3. Shri L.R. Pujari, learned AGP for the State, placing reliance upon the judgment of the Supreme Court in the case of *State of Orissa v. Brundaban Sharma & anr., reported in 1995 Supp Supreme Court Cases 249,* submits that period of limitation or reasonableness of the time should

be counted from the date of the knowledge of the authority which wants to exercise revisional powers and not from the date of the transaction. His submission is that if the order is absolutely void or transaction is absolutely contrary to the provisions of law, but because of some schemes of the parties to the transaction illegalities are brought to the notice of the authority, after long lapse of time, question of limitation could not come in the way of such authority which wants to undo the wrong. It is to be seen that in the matter of Brundaban Sharma [supra], the matter related to Orissa Estates Abolition Act, 1951 and after taking into consideration the special facts of the said case, the Apex Court made the following observations:-

> *"It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of*

the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answers would be no."

4. After appreciating the special features of the case, the Apex Court made further observations as under:-

"Under these circumstances, it cannot be said that the Board of Revenue exercised the power under Section 38-B after an unreasonable lapse of time, though from the date of the grant of patta by the Tehsildar is of 27 years. It is true that from the date of the alleged grant of patta 27 yeas did pass. But its authenticity and correctness was shrouded with suspicious features. The records of the Tehsildar were

destroyed. Who is to get the benefit? Who was responsible for it? The reasons are not far to seek. They are self-evident. So we hold that the exercise of revisional power under Section 38-B by the Board of Revenue was legal and valid and it brooked no delay, after it had come to the Board's knowledge. That apart as held by the Board of Revenue, the order passed by the Tehsildar without confirmation by the Board is non est. A non est order is a void order and it confers no title and its validity can be questioned or invalidity be set up in any proceeding or at any stage."

5. The Apex Court, in view of the special circumstances of the case and after taking into consideration that the Board of Revenue, after learning about the illegality did not commit any delay in the matter and as the order passed by Tehsildar without confirmation by the Board was non est, observed that there was no delay in exercise of the powers. So far as the revisional powers under the Bombay Land Revenue Code are concerned, are required to be exercised within the reasonable time. In the matter of *State of*

Gujarat v. Patel Raghav Natha reported in 1969 GLR 992, the Apex Court has observed that in a given case, powers must be exercised by the authority within reasonable time and the reasonable time could not be more than three years, because, for purpose of Section 65 of the Act, Legislature had thought three months' time would be sufficient for the Collector to exercise such powers. In view of the authoritative pronouncement of the Apex Court in relation to provision contained in Section 211 of the Bombay Land Revenue Code, I am unable to observe the observations made by the Apex Court in relation to Orissa Estate Abolition Act.

6. It is to be seen from the facts that sale was effected on 25.6.79, the team constituted under the provisions of the Record of Rights submitted its report on 20.4.84 and even thereafter, the Mamlatdar did not issue notice up to 3.6.85. In view of the judgment in the matter of Raghav Natha [supra] I must hold that the Gujarat Revenue Tribunal was absolutely justified in setting aside the orders passed by the Deputy

Collector and the Collector. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S. GARG, J.]

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